

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS: 04-0133**  
**Riverboat Wagering Tax**  
**For Tax Period July 2002-June 2003**

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**ISSUES**

**I. Riverboat Wagering Tax—Flexible Scheduling**

**Authority:** IC 4-33-13-1; IC 4-33-13-1.5

The Department and taxpayer interpret the language of IC 4-33-13-1.5 differently. The parties disagree on how the riverboat wagering tax should be calculated.

**STATEMENT OF FACTS**

Taxpayer is an Indiana company authorized to engage in lawful gambling activities in Indiana. Taxpayer, holder of a Riverboat Owner's License, operates a riverboat casino. Following the passage of enabling legislation (effective date July 1, 2002), taxpayer implemented flexible scheduling ("dockside gambling") on August 1, 2002.

Under this new legislation, riverboats engaged in dockside gambling paid Indiana riverboat wagering tax ("wagering tax") based on a graduated rate schedule. The graduated rate is applied to the "adjusted gross receipts received beginning the date flexible scheduling is implemented under IC 4-33-6-21." IC 4-33-13-1.5(b), version b. In July 2002, taxpayer paid wagering tax based on the flat tax rate of 22.5%. Starting August 1, 2002, taxpayer paid wagering tax based on the graduated rate schedule. In determining which tax rate to apply under the graduated schedule, taxpayer did not take into account the adjusted gross receipts received in July 2002. Instead, taxpayer remitted wagering tax at the 15% tax rate for the first \$25 million of adjusted gross receipts that it received beginning August 1, 2002.

In 2003, the General Assembly amended IC 4-33-13-1.5. With amendments retroactive to July 1, 2002, the General Assembly deleted the language applying the graduated schedule "beginning the date that flexible scheduling is implemented under IC 4-33-6-21." In its stead, the General Assembly added the following language:

If a riverboat implements flexible scheduling during any part of a period beginning July 1 of each year and ending June 30 of the following year, the tax rate imposed on the adjusted gross receipts received while the riverboat implements flexible scheduling shall be computed as if the riverboat had engaged

in flexible scheduling during the entire period beginning July 1 of each year and ending June 30 of the following year.

IC 4-33-13-1.5(g).

Taxpayer acknowledges that it is liable for an additional amount of wagering tax. In recognition of the retroactive nature of the imposition statute, the General Assembly permitted the waiver of any penalties and interest associated with the retroactive provisions “if the riverboat pays the unpaid balance due in two (2) equal installments” on July 1, 2003, and July 1, 2004. P.L. 224-2003, § 48(e).

The Department calculated taxpayer’s wagering tax liability (i.e., the unpaid balance due) and determined that taxpayer owed \$4,390,402.24. An additional assessment was proposed. Taxpayer believes this assessment overstates its tax liability by \$1,646,401. Taxpayer protests this additional assessment to the extent the amount due exceeds \$2,744,001.24.

## **DISCUSSION**

### **I. Riverboat Wagering Tax—Flexible Scheduling**

This protest concerns the meaning of IC 4-33-13-1.5(g), which states:

If a riverboat implements flexible scheduling during any part of a period beginning July 1 of each year and ending June 30 of the following year, the tax rate imposed on the adjusted gross receipts received while the riverboat implements flexible scheduling shall be computed as if the riverboat had engaged in flexible scheduling during the entire period beginning July 1 of each year and ending June 30 of the following year.

IC 4-33-13-1.5(g).

This protest also concerns, tangentially, the meaning of IC 4-33-13-1.5(h), which states:

If a riverboat:

- (1) implements flexible scheduling during any part of a period beginning July 1 of each year and ending June 30, of the following year; and
- (2) before the end of that period ceases to operate the riverboat with flexible scheduling;

the riverboat shall continue to pay a wagering tax at the tax rates imposed under subsection (b) [i.e., the graduated rate structure] until the end of that period as if the riverboat had not ceased to conduct flexible scheduling.

IC 4-33-13-1.5(h).

Taxpayer contends the language of IC 4-33-13-1.5(g) and (h) stand for the proposition that “regardless of when a riverboat either begins or ends flexible scheduling during a twelve-month period, the General Assembly intends that one tax rate structure—the graduated tax rate structure—be applied to determine the total wagering tax paid for that period.” Taxpayer is mistaken.

### Analysis

In Indiana, lawful riverboat gambling activities may be conducted in one of two ways—riverboats may provide gambling excursions or riverboats may implement flexible scheduling (i.e., offer dockside gambling). If gambling excursions are provided, the wagering tax is computed based on a flat rate of 22.5%. IC 4-33-13-1(b). If dockside gambling is offered, the wagering tax is computed based on a graduated rate schedule. IC 4-33-13-1.5(b).

The General Assembly included language in the respective imposition statutes regarding computation of the wagering tax to account for those situations in which a riverboat changes its mode of operations during the statutory twelve-month period (i.e., from July 1 through June 30 of the following year, the “twelve-month period”). That is, to account for those situations in which a riverboat ceases to provide gambling excursions in favor of dockside gambling—or ceases the latter for the former.

IC 4-33-13-1.5(h) provides guidance on how the wagering tax will be calculated after a riverboat has changed its mode of operations from dockside gambling to gambling excursions during the twelve-month period. IC 4-33-13.1.5(h), however, is silent on how the tax was calculated before this change occurred. IC 4-33-13-1.5(h) does not establish a single rate structure for the entire twelve-month period.

Similarly, IC 4-33-13-1.5(g) provides guidance on how the wagering tax will be calculated after a riverboat has changed its mode of operations during the twelve-month period from gambling excursions to dockside gambling. IC 4-33-13.1.5(g), likewise, is silent on how the tax was calculated before this change occurred. IC 4-33-13-1.5(g) does not establish a single rate structure for the entire twelve-month period.

Taxpayer’s interpretation of IC 4-33-13-1.5(g) confuses (1) the imposition of the wagering tax based upon a graduated rate schedule with (2) the selection of the proper graduated rate. A condition precedent to the imposition of the wagering tax based on the graduated rate schedule is the implementation of flexible scheduling.

If a riverboat implements flexible scheduling...the tax rate imposed on the adjusted gross receipts received while the riverboat implements flexible scheduling shall be computed....

IC 4-33-13-1.5(g). (Emphasis added.)

Once flexible scheduling has been implemented, the graduated rate selected is determined by referencing the total adjusted gross receipts received during the entire statutory twelve-month period.

[T]he tax rate...shall be computed as if the riverboat had engaged in flexible scheduling during the entire period beginning July 1 of each year and ending June 30 of the following year.

Id. (Emphasis added.)

Noncode language included with the 2003 wagering tax amendments supports the Department's interpretation of IC 4-33-13-1.5(g).

Wagering taxes imposed under IC 4-33-13-1.5 on adjusted gross receipts received on or after the date that the riverboat implemented flexible scheduling under IC 4-33-6-21 must be calculated and deposited using a graduated wagering tax rate selected (as stated in IC 4-33-13-1.5) through a calculation that includes "adjusted gross receipts received during the period beginning July 1 of each year and ending June 30 of the following year."

P.L. 224-2003, § 48(d) (effective July 1, 2002 (retroactive)). (Emphasis added.)

The General Assembly enacted legislation that is clear, concise, and unambiguous. Once taxpayer implemented flexible scheduling on August 1, 2002, taxpayer should have included its adjusted gross receipts received beginning July 1, 2002, in determining the proper graduated tax rate. Taxpayer, though, failed to do so. Furthermore, taxpayer's assertion that it should have used the graduated rate schedule to compute wagering taxes for tax periods prior to its implementation of flexible scheduling directly conflicts with the language of IC 4-33-13-1.5(g).

### **FINDING**

Taxpayer's protest is denied.